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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MALCOLM KAHLIL BUCHANAN,

Defendant and Appellant.

B290616

Los Angeles County
Super. Ct. No. GA089912

APPEAL from an order of the Superior Court of
Los Angeles County, Stanley Blumenfeld, Judge. Affirmed.

Melissa L. Camacho-Cheung, under appointment by the
Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The trial court found defendant and appellant Malcolm Kahlil Buchanan in violation of his felony probation and executed his suspended state prison sentence of ten years. Buchanan appeals. We affirm.

FACTS AND PROCEDURAL BACKGROUND

On May 30, 2013, Buchanan robbed two convenience stores and a gas station.¹ He also attempted to rob a liquor store but he did not get away with any money or property. There were seven victims in all. Buchanan was armed with a baseball bat. He also covered much of his face with a black fabric item.²

The People charged Buchanan with six counts of robbery and one count of attempted robbery. In February 2014 Buchanan pled “open” to the court, meaning there was no plea agreement between him and the prosecution. The court sent Buchanan to the Department of Corrections for a diagnostic study under Penal Code section 1203.03.³ The Department of Corrections recommended a state prison sentence.

Nevertheless, the trial court—over the prosecution’s objection—granted Buchanan probation. The court acknowledged the case was “very serious.” But, the court said, in light of Buchanan’s youth, “complete lack of [a] criminal history,” and “strong family support,” he was “going to get one more chance.” The court sentenced Buchanan to ten years in the state prison, suspended execution of that sentence, and

¹ Because the case settled before trial, we summarize the facts from the preliminary hearing.

² Witnesses said Buchanan was wearing a mask. When police stopped him later that day, they found a black beanie in his car with eye holes cut into it.

³ Statutory references are to the Penal Code.

placed Buchanan on five years of formal felony probation. The court ordered Buchanan to serve 365 days in the county jail, perform 30 days of CalTrans, write letters of apology to all the victims, stay away from the victims, pay restitution, and comply with the other standard terms of probation, including an order to obey all laws.

In April 2015, a deputy sheriff saw Buchanan sitting in his parked car with his head down. The deputy knew Buchanan, and knew he was subject to search because he was on probation. The deputy found a container with 33 ecstasy pills in the console of Buchanan's car. Buchanan told the deputy he had bought the pills for 50 dollars from "some guy in Azusa." The People filed a motion to revoke Buchanan's probation. They also apparently filed a new case (No. 5AH02089).

On October 30, 2015, Buchanan admitted his probation violation for failure to obey all laws. On November 19, 2015, the court conducted a further hearing on the violation.⁴ Both parties called witnesses to testify. The court reinstated Buchanan's probation. The court ordered him to serve an additional 365 days in the county jail (Buchanan waived his credits) and to perform 30 more days of CalTrans. The court ordered Buchanan not to use narcotics and not to associate with drug sellers or users. The court extended Buchanan's probation for about 15 months. The minute order states, "The defendant is advised that this is his last chance on probation. Any failure to comply with the court's orders, probation department or obey all laws will result in the state prison sentence being imposed [*sic*]."

On May 5, 2017, about 8:00 p.m., sheriffs were called to the home of Buchanan's mother, Erica Webster. According to

⁴ The record on appeal does not include a reporter's transcript of this hearing.

Deputy Sheriff Julian Manriques, Webster was hysterical and crying uncontrollably, unable to speak for about 10 minutes. When Webster stood up, Manriques saw that she had wet her pants.

Webster told Manriques that she and her son had been “fighting all day over money,” “arguing about a credit card,” and that Buchanan “got upset.” Webster said Buchanan had “grabbed her by the throat and [thrown] her down to the couch.” He used one hand to strangle her and the other hand to cover her mouth. Webster told Manriques she thought she was going to die.

Buchanan got off her and went to the bedroom. Webster took “that opportunity” to run out the front door. Buchanan followed her out and “tackled her on the front lawn.” He “struck her several times with his elbow, and grabbed her by her right leg.” Several neighbors apparently called 911. Manriques later spoke with one of Webster’s neighbors. The neighbor told Manriques she heard screaming and saw Webster and Buchanan “struggling on the lawn outside.” She saw Buchanan “grabbing [Webster] with both hands around the torso.” Buchanan then walked south, out of the neighbor’s view.

Deputy Sheriff Roberto Sigala heard a radio call and drove to the area. Based on information that a suspect was about a block south of the scene, Sigala drove there and saw Buchanan “walking away from the location.” Another deputy was “command[ing]” Buchanan to stop but Buchanan “picked up the pace” and was “trying to get away.” Another patrol car cut Buchanan off and the deputies “had cooperation at that time.”

The People filed a new felony case against Buchanan for the assault of his mother by means of force likely to produce great bodily injury (No. GA101070). The People also filed a motion to revoke Buchanan’s probation in the robbery case.

The motion stated the People would present evidence at Buchanan's preliminary hearing in his new case "to establish [he] had violated the terms and conditions of [his] probation" in his robbery case.

The court conducted the preliminary hearing in the assault case on August 23, 2017. At the outset of the hearing, the court—at the prosecution's request—stated it would "hear the evidence concurrently" for the new case and the probation case.

The People called Webster as a witness. She testified Buchanan was "acting mentally insane" that day. He was "on drugs" and she was "trying to get him to a facility, in custody and evaluated." Webster said Buchanan "was trying to leave the house" and she was trying to keep him there until his father arrived. Webster had "de-activated [Buchanan's] credit card" because she didn't want him to buy drugs with it. Webster was hoping Buchanan's probation officer could "get him in a drug and rehab or mental facility" but the probation officer seemed to be away from the office and could not be reached.

Webster testified she fell to the ground (apparently on purpose) on the front lawn and was "pulling on [Buchanan's] arms." Webster denied Buchanan ever hit her or that she ever told deputies that he did. She "absolutely" denied telling deputies that Buchanan had tackled her to the ground outside the house. She denied she was afraid of him.

Webster testified she did not remember telling the deputies that Buchanan wrapped his arm around her neck, strangled her, or put his hand over her mouth so she could not breathe. She did not remember telling them she thought she was going to die. Webster admitted she had urinated on her clothing but said she had "a weak bladder" "and probably would—with us trying to keep him to stay in the house, yeah." She admitted she told Manriques that Buchanan had grabbed her by the neck with both

hands, but said in fact that never happened. Webster said, “I told the deputies whatever I had to tell them so that my child could get mentally evaluated.” Webster testified the deputies told her “that was the only way for him to get . . . help.”

At the conclusion of the hearing, the court found “on a preponderance standard there has been a violation of probation” in Buchanan’s robbery case. The court also held Buchanan to answer in the assault case. The court noted that Webster undoubtedly loved her son and she was “a desperate mother.” But the court did not believe Webster had “ma[de] false statements to the police about what happened that night.” The court stated Webster appeared to be “minimizing [Buchanan’s] conduct to the court here today, based on what she thinks would be in his best interest and best to help him.”

At defense counsel’s request, the trial court appointed a neuropsychologist to evaluate Buchanan. In a report dated March 18, 2018, Dr. J. Brandon Birath wrote that Buchanan’s symptoms and behavior “strongly suggest[ed] a diagnosis of schizophrenia.” The parties appeared before the court on May 23, 2018. Buchanan’s counsel asked the court to reinstate his probation. The prosecutor expressed empathy for Buchanan’s family but noted the robbery case and the assault case were both “very serious.” The prosecutor said the district attorney’s office from the outset had viewed the robbery case as a state prison case. The prosecutor noted the court had told Buchanan in 2015 when he was arrested for the ecstasy pills “that that was going to be his final chance.” The prosecutor continued, “And then we come to this point where Mr. Buchanan is here because he has attacked a family member.”

The court heard from Buchanan’s parents and from Buchanan himself. The court then issued its ruling:

“[W]hile the court is quite understanding of the situation, I do not believe that placing him back on probation at this point in light of this history, in light of his propensity for violence, even though perhaps it is related to some mental illness, nonetheless he does represent a danger to society. . . . [T]he court has listened very carefully to all who have presented information, including Mr. Buchanan, including his parents. [¶] I also have reviewed all of the medical reports that have been presented to the court. And once again this court is not satisfied that Mr. Buchanan can be returned on probation without presenting a danger to public safety. [¶] My conclusion regrettably is to the contrary. . . . [The judge who took the plea] ordered a 90-day diagnostic in this matter. And the diagnostic came back unfavorably for Mr. Buchanan. The recommendation was state prison at that time. [¶] And then [the sentencing judge] placed him on probation with ten years hanging over his head with very stern admonitions. And this is not the first time that he has violated his probation. [The judge who heard the probation violation proceeding concurrently with the preliminary hearing] concluded . . . that there was . . . a preponderance of the evidence . . . to believe that he violated the terms and conditions of his probation by engaging in violent acts, the original charges, the numerous robberies and attempted robberies were also

violent acts. [¶] And so regrettably the court does not believe that probation is appropriate any longer.”

The court then executed the 10-year suspended sentence. Even though Buchanan had waived his credits as part of the agreement to have his probation reinstated after the narcotics arrest, the court gave Buchanan all of his credits (and the prosecution did not object). In light of the outcome of the probation violation proceeding, the prosecution dismissed the new assault case. Buchanan appealed.

We appointed counsel to represent Buchanan on appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court independently to review the record.⁵ On December 10, 2018, we ordered appointed counsel to notify Buchanan that, within 30 days, he could submit any contentions or issues he wished this court to consider. To date, we have received no response from Buchanan.

DISCUSSION

The standard of proof required to revoke probation is a preponderance of the evidence to support the violation. (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.) The court has “very broad discretion in determining whether a probationer has violated probation.” (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) “[P]robation may be revoked despite the fact that the

⁵ On January 23, 2019, counsel filed a motion to stay *Wende* treatment of this case pending the trial court’s consideration of Buchanan’s motion to vacate assessments and stay restitution fines. We granted that motion. On March 18, 2019, counsel notified us that the trial court had vacated the assessments and stayed the restitution fines. Counsel stated, “[T]he *Wende* treatment of [Buchanan’s] appeal may be reinstated.”

evidence of the probationer's guilt may be insufficient to convict him of the new offense.” (*In re Coughlin* (1976) 16 Cal.3d 52, 56.)

We review the trial court's decision to revoke Buchanan's probation for substantial evidence, according great deference to the trial court's decision. (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.) We also do not reweigh the evidence or determine the credibility of witnesses on appeal. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206-1207.) “The power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination” (*People v. Superior Court (Jones)* 18 Cal.4th 667, 681.)

The testimony of Officer Manriques at the probation violation hearing and preliminary hearing is substantial evidence to support the court's finding that Buchanan violated his probation conditions when he attacked his mother. The court stated—gently and politely—that it did not believe Buchanan's mother's recantation and denial of statements she had made to the deputy sheriffs who came to her home in response to several 911 calls. We see no abuse of discretion to justify disturbing the trial court's revocation of Buchanan's probation. (*People v. Self* (1991) 233 Cal.App.3d 414, 417.)

We have examined the entire record, and we are satisfied that Buchanan's counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The order revoking Malcolm Kahlil Buchanan's probation and executing his ten-year suspended sentence is affirmed.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.